IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.Nos.1726 of 2003 and 1611 of 2002
and
W.P.M.P.No.2378 of 2003

W.A.No.1726/2003

The Management of
Srichakra Tyres Limited,
10, Jawahar Road,
Madurai-625 002. ... Appellant /2nd Respondent.

vs.

1.S.Stephen Arokiaraj
25A, Subramaniapuram,
First Street,
Madurai-625 011.

2.The Presiding Officer,
Labour Court,
Madurai. ... Respondents/Petitioner,
1st Respondent.

W.A.No.1611/2002

S.Stephen Arokiaraj
25A, Subramaniapuram,
First Street,
Madurai-625 011. ... ... Appellant/Petitioner

Vs.

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1.The Presiding Officer,
Labour Court,
Madurai-625 002.

2.The Management of
Srichakra Tyres Limited,
10, Jawahar Road,
Madurai-625 002. ... Respondents/Respondents.

Writ appeals filed under Clause 15 of Letters Patent against the order dated 07.11.2000 passed in W.P.No.22468 of 1993.

For Appellant in W.A.No.1726 of 2003/ 2nd Respondent in W.A.No.1611 of 2002 : Mr.Meenakshisundaram

For 1st Respondent in W.A.No.1726 of 2003/ appellant in W.A.No.1611 of 2002 : Mr.V.Prakash, SC for Mr.P.Chandrasekar

COMMON JUDGMENT

(P.R.SHIVAKUMAR,J.)

These writ appeals have been filed against the order of the learned Single Judge dated 07.11.2000 made in W.P.No.22468 of 1993.

2. The first respondent in W.A.No.1726 of 2003/appellant in W.A.No.1611 of 2002 (hereinafter referred to as the delinquent workman) had filed the above said writ petition challenging the Award of the Labour Court, Madurai, dated 21st April 1993 passed in I.D.No.70/1990. The said Industrial dispute had been referred to the labour Court at the instance of the worker, the first respondent in W.A.No.1726 of 2003/appellant in W.A.No.1611 of 2002, pursuant to his dismissal from service for certain alleged misconducts. The impugned order of dismissal was dated 02.09.1989 and the said order had been passed, of course, after conducting an enquiry regarding the charges levelled against the worker. The charges are as follows:

(1) On 27.07.1989 the first respondent in W.A.No.1726 of 2003/appellant in W.A.No.1611 of 2002 (workman) took a co-worker Thiru.A.Pandiarajan from his place of work to the power house, asked him to affix his signature on a paper and threatened him when he refused to do so; and

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(2) he went to the work spot around 10.45 p.m. even before his shift commenced on the above said date and obtained signatures from some of the workmen.

The enquiry officer after enquiry held both the charges proved. The management accepted the said finding and terminated the first respondent in W.A.No.1726 of 2003/appellant in W.A.No.1611 of 2002 (workman) from service imposing a penalty of dismissal from service by order dated 02.09.1989 in Ref.SCT/PRSNL/Spl.

3. In the Industrial dispute raised before the labour Court, Madurai under Section 2(A) of the Industrial Disputes Act, the learned Presiding Officer of the Labour held that the challenge made to the finding of the enquiry officer could not be sustained and that the Management had clearly proved its charges against the first respondent in W.A.No.1726 of 2003/appellant in W.A.No.1611 of 2002/delinquent workman. At the same time, the learned Presiding Officer of the Labour Court held that the punishment of dismissal from service was disproportionate. However, the labour Court was of the view that though the punishment was disproportionate, the delinquent workman would not be entitled to reinstatement or backwages and that it would be sufficient to award compensation. The compensation amount was fixed at Rs.2,500/-.

4. The said Award of the labour Court was challenged in the writ petition. The learned Single Judge, without going into the merits of the case regarding proof of the charges, as the same was not challenged, concurred with the view of the labour Court that the punishment awarded was disproportionate to the proved charges, but disagreed with the view of the labour Court that the delinquent workman would not be entitled to reinstatement. In line with the said conclusion, the learned Single Judge has directed reinstatement without backwages but with continuity of service. The said order of the learned Single Judge is put in issue in these writ appeals. As against the order of reinstatement, the Management has filed W.A.No.1726 of 2003. As against the denial of back wages, the workman has filed W.A.No.1611 of 2002. Hence both the writ appeals have been taken up together for disposal.

5. We have heard the submissions made on either side and paid our anxious considerations to the same.

6. It is the contention of the learned counsel for the management that the learned Single Judge ought not to have interfered with the Award of the labour Court when the gravity of the proved misbehaviour and proportionality of the punishment awarded was considered by the labour Court; that the reasons assigned by the labour Court for affirming the dismissal order were not adverted to by the learned Single Judge and that the learned Single Judge has committed an error in holding that the proved misconduct was only a minor one. The learned counsel for the management has relied on the judgment of a Division Bench of this Court pronounced in Tractors and

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Farm Equipments, Ltd. V. R.Venkataraman [1990(1)L.L.N.710], wherein it has been held as follows:

> "... Once the Labour Court in exercise of its powers under S.11A of the Industrial Disputes Act, evaluates the gravity of misconduct for the purpose of punishment to be imposed on a workman and exercises its discretion, High Court exercising jurisdiction under Art.226 of the Constitution of India, in the absence of any important legal principle should not undertake to re-examine the question of adequacy or inadequacy of the materials for interference by the Labour Court...."

The same view was quoted with approval in a subsequent judgment of another Division Bench of this Court in Carborandum Universal, Ltd. V. Presiding Officer reported in 1997(3) L.L.N.571.

7. The learned counsel for the delinquent workman, namely the first respondent in W.A.No.1726 of 2003/appellant in W.A.No.1611 of 2002 has argued that the order of the learned Single Judge does not suffer from any defect or infirmity and that the learned Single Judge has not committed an error in holding that the proved misconduct was only a minor one. It is the further contention of the learned counsel for the delinquent workman that the direction for reinstatement with continuity of service is perfectly justified and on the other hand the denial of back wages alone has got to be reversed.

8. There can be no second opinion that the High Court exercising jurisdiction under Article 226 of the Constitution of India should not undertake a re-examination of the question of proportionality of punishment when the Labour Court has done it in exercise of its power under Section 11-A of the Industrial Disputes Act, 1947 in the absence of involvement of an important legal principle. But in the instant case, we do not think that the Labour Court has exercised its discretion properly. Improper exercise of discretion can very well be interfered with by the High Court in the writ proceedings. Further more, we are of the considered view that the argument advanced on behalf of the management was based on the assumption that the Labour Court had upheld and affirmed the order of dismissal made by the Management, where as in fact it is not so. In clear and unambiguous terms, the Labour Court has held that the punishment imposed was excessive and disproportionate to the gravity of the proved misconduct. The relevant observation incorporated in the Award in vernacular language reads,

> "மனுதாரர் செய்த குற்றத்திற்கு வேலை நீக்கத் தண்டனை அதிகமானது என்றாலும்,,, ".

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The said observation alone is enough to show that the labour Court had expressed a clear opinion that the punishment was disproportionate and excessive.

9. On the other hand, after having held that the punishment was disproportionate and while considering the relief to which the delinquent workman was entitled, the learned Presiding Officer seems to have made an observation that allowing the delinquent workman would lead undesirable results, like altercation between workmen, untoward incidents, strikes and ultimate closure of the industry. A cursory glance at the reasons assigned by the labour Court for awarding compensation instead of reinstatement would show that the Presiding Officer has once again turned around and enumerated the reasons that are germane for upholding the punishment of dismissal. Such an approach to the problem made by the labour Court, having inbuilt contradictions, does not deserve the approval of this Court. Therefore, there is nothing wrong in the observation made by the learned Single Judge that in the natural course the second respondent in W.A.No.1726 of 2003/first respondent in W.A.No.1611 of 2002 (Presiding Officer, Labour Court) ought to have set aside the dismissal order. The said observation was made to connote that the labour Court, in tune with its finding that the punishment was disproportionate, should have set aside the dismissal order and substituted the same with a lesser punishment. We do not find any infirmity or defect in the said observation made by the learned Single Judge.

10. It is the further contention of the learned counsel for the management that the observation made by the learned Single Judge holding the proved misconduct not to be major is erroneous. The acts constituting misconduct are:

> (1) the delinquent workman obtained signatures of the other workmen in a paper against the elected union office bearers;
>
> (2) he move out of his place of work for the purpose of getting the signatures of other workmen during duty hours;
>
> (3) he threatened a co-worker with dire consequences when he refused to affix his signature; and
>
> (4) he went to the place of work before the commencement of his shift timing for getting the signatures of other workmen and thereby caused hindrance to their work.

In short, the allegation is that he was indulged in the act of getting the signatures of other workers during his duty time as well as off-time and in such process he also intimidated one of the co-workers.

11. It is not the case of the Management that due to the alleged intimidation, the intimidated co-worker either yielded to the pressure or that the same resulted in any altercation. There is no

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evidence to show that any one of the workman, except Pandiarajan, complained that the delinquent caused any obstruction hindrance to or distraction of their work by his act of getting signatures. It is not even the case of the Management that there was any shortage of production or defective production on the relevant date (27.07.1989) in any one of the shifts in which the delinquent was allegedly involved in the process of getting the signatures of the workers. Moreover, it is quite obvious that the Management, on coming to know that a signature movement had been lodged, chose to get regret letters even from the concerned workers who subscribed their signatures, out of their own volition without there being any invitation or coercion from the delinquent workman. The persons who were instrumental for the signature movement against the elected Office-bearers of the union were not taken to task in a similar manner. The same will give an indication that no serious problem had been created by the said signature movement. Under these circumstances, we are of the considered view that the learned Single Judge has rightly observed that the proved misconduct was not major and it was only a minor one. Therefore, the challenge made to the said observation made by the learned Single Judge has got to be discountenanced.

12. Coming to the question of relief to which the delinquent is entitled, we are of the view that the order of the learned Single Judge does not suffer from any defect or infirmity. The contention of the learned counsel for the management that no interference should have been made with the order of the Presiding Officer, in this regard, passed in exercise of his discretion under Section 11-A of the Industrial Disputes Act, 1947 deserves to be rejected. The learned Presiding Officer has simply ordered payment of a paltry sum of Rs.2,500/- as compensation in lieu of reinstatement which we consider nothing but a pittance. Therefore, the learned Single Judge is very much justified in interfering with the Award of the labour Court concerning the relief to be granted to the delinquent. The learned Single Judge has fairly disallowed back wages and directed reinstatement without back wages but with continuity of service. Therefore, the challenge made by the management in W.A.No.1726 of 2003 to the order of the learned Single Judge, so far as it directs reinstatement is concerned, has got to be rejected as untenable. At the same time, we are also of the view that the denial of back wages while directing reinstatement with continuity of service shall serve as a reasonable penalty proportionate to the gravity of the proved misconduct and that the challenge made by the delinquent workman in W.A.No.1611 of 2002 also has got to be discountenanced. The same shall be the reason in addition to the reasons assigned by the learned Single Judge for denying back wages. Therefore, there is no scope for interference with the order of the learned Single Judge either in the writ appeal filed by the management or in the writ appeal filed by the delinquent workman and the same has got to be confirmed with the result that both the writ appeals deserve to be dismissed.

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13. In view of the foregoing discussions, we are convinced that there is no merit in either of the writ appeals and the same deserve to be dismissed. Accordingly, the Writ Appeals are dismissed. Consequently, the connected miscellaneous petition is also dismissed. There shall be no order as to payment of costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

SML

To

The Presiding Officer,
Labour Court,
Madurai.

+ 1 CC To Mr. P.Chandrasekaran, Advocate SR NO.75873

+ 1 CC To Mr. Meenakshi Sundaram, Advocate SR NO.75537

W.A.Nos.1726 of 2003 and
1611 of 2002

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